

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BENJAMIN HOOVER, SR.,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:04CV271-DJS
)	
CHIEF JOE MOKWA,)	
CAPTAIN LEMAN DOBBINS,)	
ALDERWOMAN BERNICE KING,)	
SERGEANT CATHERINE DENNIS,)	
DEBRA THIMES,)	
ROBERT PORTER,)	
JEROME TURNER, and)	
JUDY LANE,)	
)	
Defendants.)	

ORDER

On May 23, 2005, the Court granted the remaining defendants' motion to dismiss plaintiff's complaint for plaintiff's failure to prosecute. The motion, to which plaintiff had failed to respond, was based on plaintiff's failure to comply with his disclosure requirements under Fed.R.Civ.P. 26(a)(1) and the Court's Case Management Order, as well as plaintiff's failure to appear for his properly noticed deposition. Now before the Court is plaintiff's motion to set aside the dismissal, in which plaintiff claims he was not aware that his deposition had been scheduled and that he has been "stressed mentally out" and unable to respond to the Court until now. Motion [Doc. #41], p.1.

The motion filed June 10, 2005 is untimely as a motion to alter or amend judgment pursuant to Fed.R.Civ.P. 59(e). If the motion is construed as one for relief from judgment under Rule 60(b), the Court would also deny it. Plaintiff's summary and unsworn assertions are not adequate to demonstrate mistake or excusable neglect, particularly in light of plaintiff's failure to respond to the motion seeking dismissal of his case.

Accordingly, upon careful consideration,

IT IS HEREBY ORDERED that plaintiff's motion to set aside and vacate the Court's order of dismissal of plaintiff's action [Doc. #41] is denied.

Dated this 16th day of August, 2005.

/s/ Donald J. Stohr
UNITED STATES DISTRICT JUDGE